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STATE OF CALIFORNIA

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February 17, 1988

Honorable Donald Carey
County of Siskiyou Assessor
Court House
Yreka, CA 96097

Attention Mr. George Singewald
Assistant Assessor

This is in response to your letter to Mr. James Delaney of December 22, 1987 in which you request our opinion with respect to mining claims which have been cross-filed upon. The facts as set forth in your letter and in documents which you have provided are as follows:

On September 1, 1983, Francis Packard filed original Location Notices on the Washoe #1-5 Placer mining claims.

On August 9, 1984, International Placer Development Inc. became a judgment creditor of Francis Packard. On October 1, 1984, Francis Packard deeded the claims to Washoe Mining Exploration Inc.

On August 29, 1986, a Proof of Labor was filed by Leroy DeHaven for the Washoe claims indicating Francis Packard as owner. The Tax Collector's Office signed the Assessment Work Notice since no taxes were due in Francis Packard's name. It was accepted by your office for Washoe Mining Exploration Inc. The Proof of Labor stated that assessment work had been done on behalf of Washoe in June and July of 1985.

It is your understanding that on January 3, 1987, Riverside Auto & Truck (for Helaron Minerals) paid the 1986-87 taxes that were assessed to Washoe Mining Exploration Inc. and subsequently filed Location Notices for the Helaron #1-5 which seem to constitute the same claims.

On April 22, 1987, the Siskiyou County Sheriff, pursuant to a writ of execution, sold all of the right, title and interest of Francis Packard in and to the subject mining claims to International Placer Development Inc.

Handwritten signature and date
14/

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On August 13, 1987, an Assessment Work Notice was filed on behalf of Helaron specifying work having been done for the period August 26 - September 5, 1986; January 14, 1987; and May 9 and 10, 1987.

On August 21, 1987, Francis Packard signed and recorded a Proof of Labor on behalf of Washoe covering the subject claims and specifically asserting the performance of assessment work valued at \$250 for July 1986, \$225 for September 1986, \$550 for October 1986 and \$250 for December 1986.

On August 25, 1987, International Placer Development Inc. filed an Assessment Work Notice for mining assessment year ending September 1, 1987.

You ask whether Washoe's property tax assessment for the 1987-88 tax year would necessarily be negated as a result of the foregoing facts.

Assuming a claim has been validly located, \$100 worth of labor must be performed or improvements made before 12:00 o'clock noon of the first day of September of each year subsequent to the location year until the mine is patented in order for the claimant to hold possession of the claim. 30 U.S.C.A. section 28, Public Resources Code section 2314.

Whenever labor is performed and improvements are made upon any mining claim, the person in whose behalf such labor was performed or improvements made, or someone in his behalf, shall, within 30 days after the time limited by law for performing such labor or making such improvements record an affidavit stating among other things a description of the labor and improvements performed or made, the value of each such item, and the dates on which or the period of time within which the same was performed or made. (Pub. Resources Code § 2315(a).)

The affidavit so recorded shall be prima facie evidence of the performance of the labor and the making of the improvements as stated in the affidavit. (Pub. Resources Code § 2315(b).)

Subject to an exception not here applicable, the neglect or failure of the owner of any mining claim to timely record or cause to be recorded such an affidavit shall create a prima facie presumption of the act and intent of the owner to abandon such claim at the end of the assessment year within which the

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labor should have been performed or the improvements made under the laws of the United States and also shall throw the burden of proof upon the owner or owners of such claim to show that such labor has been performed and that such improvements have been made in any contest, suit or proceeding touching the title to the claim. (Pub. Resources Code § 2315(c).)

Revenue and Taxation Code section 405 provides that "annually, the assessor shall assess all the taxable property in his county, except state assessed property, to the persons owning, claiming, possessing, or controlling it on the lien date." Accordingly, if the facts indicate that Washoe Mining Exploration Inc. either owned, claimed, possessed or controlled the subject mining claims on March 1, 1987, such claims were validly assessed to Washoe.

Helaron apparently contends that Washoe's claims were abandoned or forfeited as a result of its failure to do any assessment work for the mining assessment year beginning September 1, 1985 and ending September 1, 1986. Helaron's claim of ownership as of lien date 1987 is, according to the facts presented, based upon its filing of Location Notices for the subject claims sometime between January 3 and March 1, 1987.

The Proof of Labor recorded on behalf of Washoe August 29, 1986 although timely for the 1985-86 mining assessment year did not state that any assessment work was done for that year. It stated instead that certain work was done in June and July of 1985 which was prior to the commencement of the 1985-86 mining assessment year. It therefore appears that the Proof of Labor recorded August 29, 1986 on Washoe's behalf fails to prove that Washoe did any assessment work for the year in question and as a result a prima facie presumption of the act and intent of abandonment arose. (Pub. Resources Code § 2315(c).)

Abandonment of a mining claim is a question of intention (Taylor v. Middleton (1885) 67 Cal. 656) and can be sustained only by clear proof. (McCann v. McMillan (1900) 129 Cal. 350.) Accordingly, to constitute abandonment of a mining claim there must be a relinquishment of all rights with the intention never to return, and with a voluntary and independent purpose to surrender the claims to the next owner. (Peachy v. Frisco Gold Mines Co. (1913) 204 Fed. 659.) That clearly is not the case here as evidenced by Washoe's Proof of Labor for the 1986-87 mining assessment year recorded August 21, 1987.

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Further, as against an adverse claimant, failure to do annual assessment work will not, standing alone, result in forfeiture of a mining claim. The test is whether assessment work has been resumed on the mining claims prior to relocation thereof. (Pascoe v. Richards (1962) 201 Cal.App.2d 680, 686.)

According to Washoe's Proof of Labor recorded August 21, 1987, Washoe performed assessment work in July, September, October and December of 1986. Public Resources Code section 2315(b) provides that the affidavit so recorded shall be prima facie evidence of the performance of such work. The law places the burden on Helaron as a subsequent locator to prove the failure of Washoe to have done the work stated to have been done in Washoe's Proof of Labor recorded August 21, 1987. (Sampson v. Page (1954) 129 Cal.App.2d 356.) Since the law does not favor forfeitures, such proof must be clear and convincing. (Betts v. Stephenson (1950) 100 Cal.App.2d 361.) There is no indication from the material submitted that Washoe did not in fact do the work claimed to have been done in its Proof of Labor. Accordingly, even if Washoe did not perform its annual assessment work for the prior mining assessment year, there would be no forfeiture of its claims because it resumed its assessment work on the claims prior to the time Helaron filed Location Notices. Based on the facts presented, it is therefore our opinion that Washoe was the owner of the subject claims as of lien date 1987. Any ownership interest in the subject claims acquired by International Placer Development Inc. was after that date as a result of the Sheriff's sale on April 22, 1987. Moreover, it is clear that Washoe was claiming the subject mining claims on lien date 1987 as evidenced by its Proof of Labor filed August 21, 1987. In our view, that alone is sufficient to authorize an assessment in Washoe's name regardless of whether Washoe in fact was the owner on March 1, 1987. The assessor is not required to pass upon the condition of title for purposes of taxation and assessment. (Tilden v. County of Orange (1949) 89 Cal.App.2d 586, 589. Accordingly, we are of the opinion that the subject mining claims were validly assessed to Washoe for the 1987-88 tax year under Revenue and Taxation Code Section 405.

If we can be of further assistance in this matter, please let us know.

Very truly yours,



Eric F. Eisenlauer
Tax Counsel